against him. The Petitioner's lawsuits and claims, since the submission of Petitioner's first lawsuit, have, as in this case, all had to do with the retaliation that he is subjected to whenever he attempts to assert rights and privileges due him as a Postal Service employee and a Veteran.

In this case the doctrine of res judicata has, once again, been wrongfully applied.

Because of the retaliation claimed, and because of the nature of the Petitioner's case, prior adjudications have involved most of the same claims as this latter suit, prior adjudications have involved many of the same parties as this latter lawsuit, and, prior final judgment on the merits has been determined only because on May 9, 2005 the Court of Appeal decided an important federal question in a way that conflicts with relevant decisions of other U.S. Courts of Appeal and of the United States Supreme Court.

It has been held that it is the motive for, rather than the character of, the actions taken against an employee that determines whether the claim is one of retaliation. **Heuer v. McLain**, 203 F.3d 1021, 1024 (7th Cir 2000); **Marrero v. Goya of Puerto Rico, Inc.**, 304 F.3d 7, 26 (1st Cir. 2002). Further, it is established that summary judgment may be granted only where there is found no triable issue of fact, and questions of motives and states of mind raise factual issues that preclude summary judgment. ***See*** **Sischo-Nownejad v. Merced Comm. College Dist.**, 934 F.2d 1104, 1111 (1991).

Summary judgment should not have been granted by the District Court in this case as there existed triable issues of fact with regard to the Petitioner's claims of discrimination and retaliation. **Heuer v. McLain**, 203 F.3d 1021, 1024 (7th Cir 2000); **Marrero v. Goya of Puerto Rico, Inc.**, 304 F.3d

7, 26 (1st Cir. 2002); **Sischo-Nownejad v. Merced Comm. College Dist.,** 934 F.2d 1104, 1111 (1991). There could not have been a final judgment on the merits in this case without the District Court's granting, and the Court of Appeal affirmation of the granting, of summary judgment.

Retaliation As Presented In The Present Case

It shall be an unlawful employment practice for an employer to discriminate against an employee because that employee has opposed any practice made an unlawful employment practice by 42 U.S.C.S. 2000e through 2000e-17. (Title VII of the Civil Rights Act of 1964, as amended.), or because that employee has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 42 U.S.C.S. 2000e through 2000e-17, (Title VII of the Civil Rights Act of 1964.). **42 U.S.C.S. 2000e-3.** An employer's action can be called retaliation for the purposes of Title VII of the Civil Rights Act if the employee is made worse off because of participation in protected activity such as making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under 42 U.S.C.S. 2000e through 2000e-17, (Title VII of the Civil Rights Act of 1964.). **Civil Rights Act of 1964 701, et. seq.; 42 U.S.C.A. 2000e, et. seq.;** **McGuire v. City of Springfield, Ill.**, 280 F.3d 794 (2002).

The purpose of the retaliation provision of 42 U.S.C.S. 2000e, et. seq. is to prevent Title VII claims from being deterred. **Heuer v. Weil-McLain**, 203 F.3d 1021 (2000).

An employer's action can be called retaliation for the purposes of Title VII of the Civil Rights Act if the employee is made worse off because of participation in protected

activity such as making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under 42 U.S.C.S. 2000e through 2000e-17, (Title VII of the Civil Rights Act of 1964.). **Civil Rights Act of 1964 701, et. seq.; 42 U.S.C.A. 2000e, et. seq.;** **McGuire v. City of Springfield, Ill.**, 280 F.3d 794 (2002).

All cases brought by the Petitioner since the Petitioner's first EEO charge and subsequent lawsuit have constituted statements of the facts that every time that the Petitioner filed a claim or charge with the U.S. Equal Employment Opportunity Commission, the Postal Service, by and through its employees, would take an adverse employment action against him and the Petitioner would be made worse off because of his participation in the protected activities of making a charge, testifying, assisting, and participating in an investigation, proceeding, or hearing under Title VII of the Civil Rights Act of 1964. The Petitioner's lawsuits and claims therein have all had to do with the retaliation that the Petitioner has been subjected to whenever he attempts to, or has attempted to, assert rights due him as a Postal Service employee, a Veteran, and a citizen of the United States.

Again, retaliation is the essential claim made by the Petitioner in each of his prior cases. The Petitioner's prior adjudications have by necessity involved most of the same claims as this latter suit. The Petitioner's prior adjudications have by necessity involved many of the same parties. On May 9, 2005, the Court of Appeal, as has been repeatedly done, decided to overlook the Petitioner's essential claim of retaliation, and, made a determination that prior final judgment on the merits had been reached by the District Court, which had also decided to overlook the Petitioner's essential claim of retaliation.

The May 9, 2005 decision of the Court of Appeal conflicts with relevant decisions of the federal courts and of this U.S. Supreme Court.

The Petitioner Has Been Denied Due Process In The Present Case

No person shall be deprived of life, liberty, or property, without due process of law. **Amendment V, Constitution of the United States**. What is due process of law depends upon the circumstances varying with the subject matter and necessities of the situation. **Mover v. Peabody**, 212 U.S. 78, 53 L.Ed. 410, 29 S.Ct. 235 (1909).

It has been held that it is the motive for, rather than the character of, the actions taken against an employee that determines whether the claim is one of retaliation. **Heuer v. McLain**, 203 F.3d 1021, 1024 (7th Cir 2000); **Marrero v. Goya of Puerto Rico, Inc.**, 304 F.3d 7, 26 (1st Cir. 2002). Further, it is established that summary judgment may be granted only where there is found no triable issue of fact, and questions of motives and states of mind raise factual issues that preclude summary judgment. *See* **Sischo-Nownejad v. Merced Comm. College Dist.**, 934 F.2d 1104, 1111 (1991).

Summary judgment should not have been granted by the District Court in this case as there existed triable issues of fact with regard to the Petitioner's claims of discrimination and retaliation. **Heuer v. McLain**, 203 F.3d 1021, 1024 (7th Cir 2000); **Marrero v. Goya of Puerto Rico, Inc.**, 304 F.3d 7, 26 (1st Cir. 2002); **Sischo-Nownejad v. Merced Comm. College Dist.**, 934 F.2d 1104, 1111 (1991). There could not have been a final judgment on the merits in this case without the District Court's granting, and the Court of Appeal affirming the granting, of summary judgment.

Again, prior final judgment on the merits has been determined only because on May 9, 2005 the Court of Appeal decided an important federal question in a way that conflicts with relevant federal court decisions.

It has been long established that due process under the United States Constitution involves the right to a fair and impartial hearing. In observing the Constitutional guarantee of due process, the court must look to the substance of the individual rights to life, liberty, and property involved. Any legal proceeding which regards and preserves the principles of liberty and justice, must be held to due process of law. ***See*** **Amendment 5, Constitution of the United States**; **Hurtado v. California**, 110 U.S. 516 (1884); **Twining v. New Jersey**, 211 U.S. 78 (1908); **Powell v. Alabama**, 287 U.S. 45 (1932); **Palko v. Connecticut**, 302 U.S. 319 (1937); **Snyder v. Massachusetts**, 291 U.S. 97 (1934).

The Petitioner's claims of retaliation were never considered by the lower court in that the Court of Appeal's most immediate attention went to the application of the doctrine of res judicata and the propriety of summary judgment in the present case. **(APPENDIX A)**. Summary judgment should not have been granted by the District Court in this case as there existed triable issues of fact with regard to the Petitioner's claims of discrimination and retaliation. **Heuer v. McLain**, 203 F.3d 1021, 1024 (7th Cir 2000); **Marrero v. Goya of Puerto Rico, Inc.**, 304 F.3d 7, 26 (1st Cir. 2002); **Sischo-Nownejad v. Merced Comm. College Dist.**, 934 F.2d 1104, 1111 (1991). On May 9, 2005, the Court of Appeal, as has been repeatedly done, decided to overlook the Petitioner's essential claim of retaliation, and, made a determination that prior final judgment on the merits had been reached by the District Court, which had also decided to overlook the Petitioner's essential claim of

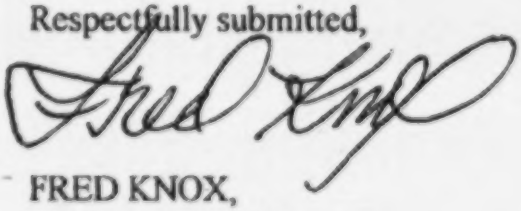
retaliation.

CONCLUSION

The Court of Appeal's May 9, 2005 decision had to do with an important federal question that the Court of Appeal decided in a way that conflicts with relevant decisions of the federal courts. By its May 9, 2005 decision, the Court of Appeal, as had the United States District Court for the Northern District of California, denied the Petitioner due process of law.

Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari, and for each and all of the reasons stated herein and above, a writ of certiorari must be issued by this United States
Supreme Court
/////

Respectfully submitted,



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Docket No.: _____
United States Court of Appeal For the Ninth Circuit Case No. 04-16200

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2004

FRED KNOX-Petitioner

v.

JOHN E. POTTER, ET. AL.,-Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

RETYPED OPINION OF

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRED KNOX,

Plaintiff-Appellant

v.

JOHN E. POTTER; Postmaster General, et. al.,

Defendants-Appellees.

_____/

Nos. 0416200

D.C. No. CV-03-03638-MMC

MEMORANDUM*

Appeal from the United States District Court
For the Northern District of California
Maxine M. Chesney. District Judge, Presiding

Submitted May 9, 2005**

Before: PREGERSON, CANBY, and THOMAS, Circuit Judges.

*** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Cir. R. 36-3.**

**** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P.**

34(a)(2).

Fred Knox appeals pro se the district court's order granting defendants' motion to dismiss on res judicata grounds his action alleging violations of Title VII, the Veterans Preference Act, 29 U.S.C. 157-58, and various state laws. We have jurisdiction pursuant to 28 U.S.C. 1291. We review de novo, *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997), and we affirm.

Contrary to Knox's contentions, defendants established an identity of claims as Knox's current action arose from the same transactional nucleus of fact as his prior actions. *See Constantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (res judicata bars "all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties... on the same cause of action.") (internal quotations omitted). Moreover, the district court's grant

of summary judgment in favor of defendants in Knox's prior action constituted a final judgment on the merits. ***See Hells Canyon Preservation Council v. U.S. Forest Serv.*****, 403 F.3d 683, 686 (9th Cir. 2005). Accordingly, the district court properly granted defendants' motion to dismiss on res judicata grounds. See Western Radio Servs. Co. 123 F.3d at 1192 (doctrine of res judicata serves to bar a claim where there is an identity of claims, a final judgment on the merits and an identity of parties).**

Knox's remaining contentions lack merit.

AFFIRMED.